

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ERNESTO FAVELA-GONZALEZ,

Petitioner,

v.

No. CV 14-257 RB/GBW  
CR 13- 771 RB

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND  
RECOMMENDED DISPOSITION**

This matter comes before the Court on Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody. *Doc. 1.*

Petitioner argues that he suffered ineffective assistance of counsel because his attorney (1) failed to advise him of his constitutional rights prior to pleading guilty, (2) failed to object to the presentence report, (3) failed to provide an adequate factual basis for the guilty plea including failing to challenge the deportation order on which his illegal reentry charge was predicated, and (4) failed to file a timely notice of appeal. *See generally doc. 1.*

The Magistrate Judge filed his Proposed Findings and Recommended Disposition (PFRD) on January 12, 2015. *Doc. 12.* He recommended dismissing the first claim, stating that "Petitioner cannot show prejudice . . . because he was repeatedly advised of these rights in his initial appearance and two plea hearings." *Id.* at 12. As to

the second claim, the Magistrate Judge concluded that Petitioner had waived his right to collaterally attack his counsel's performance at sentencing. *Id.* at 12-13. For Petitioner's third claim, the Magistrate Judge recommended finding that his counsel was not ineffective for failing to argue that his deportation order could not support the crime of reentry because Petitioner "failed to establish he had a plausible argument for invalidating the deportation order underlying his conviction." *Id.* at 14-16. Finally, the Magistrate Judge recommended dismissing Petitioner's fourth claim because Petitioner had waived his right to appeal and, "[u]nder the circumstances of this case, there are no facts which would support a finding that Petitioner's counsel had a duty to consult him about appealing." *Id.* at 18.

Petitioner has filed no objections to the PFRD, and, upon review of the record, I concur with the Magistrate Judge's findings and recommendations.

Wherefore, IT IS HEREBY ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition, *doc.* 12, is ADOPTED, and Petitioner's claims of ineffective assistance of counsel are hereby DISMISSED with prejudice.



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ROBERT C. BRACK

UNITED STATES DISTRICT JUDGE